IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.267 OF 1991

The State of Maharashtra **..Appellant (Orig.Defendant)**

Versus

M/s.Atur India Pvt. Ltd.
through its director, Kishor
Arjun Mansukhani, Age 31,
Occ.Business, R/o.Pune, Atur Chambers
A-2, Moledina Road, Pune-411 001 **..Respondent (Orig.Plaintiff)**

Shri B.H. Mehta AGP for the Appellant-State
Shri S.A. Kumbhakoni for the Respondent

CORAM : S.B.MHASE AND S.R.SATHE,JJ.
DATED : 17/10/2007

ORAL JUDGEMENT (PER SATHE,J.) :-

1. Being aggrieved by the judgement and decree passed by the Civil Judge, Senior Division, Sangli in Special Civil Suit No.43 of 1990 whereby the award passed against the Appellant-defendant was confirmed and the Appellant-defendant was directed to pay to Respondent M/s. Atur India Private Limited original Plaintiff/claimant Rs.31,64,711/- together with interest at the rate of Rs.16.5% per annum from 01/02/1990 till the realization, the State of Maharashtra has filed the present appeal.

2. Brief facts giving rise to this appeal are as under :-

Irrigation department of the State of Maharashtra had invited tenders in 1981 for construction of Warana Aqueduct on the basis of departmental as well as contractors own designs. Plaintiff's tender on their own design on lump sum basis was the lowest. The said tender was accepted by the defendant-State of Maharashtra for a final price of Rs.2,58,62,000/- under the work order dated 07/10/1981. Initially, the time limit to complete the work was 42 months i.e. upto 06/04/1985 but subsequently it was extended upto 31/05/1989.

3. The dispute between Plaintiff and defendant arose when the work on the transitions as per the contractor's design approved earlier by Central Design Organization was stopped and latter asked to be replaced by Masonry transitions and its value at 10% as per the Billing Schedule was proposed to be deducted from the total cost of work. In view of the said dispute, by virtue of Maharashtra Government Resolution dated 07/03/1989 Shri N.V. Khursale, retired Chief Engineer, Government of Maharashtra, Shri D.V. Kulkarni, Chief Engineer and Joint Secretary Shri M.D.Deshmukh, retired Secretary Government of Maharashtra were appointed as arbitrators to decide the

dispute between plaintiff and defendants in respect of the following items viz.:-

Claim No.1 :- Deletion of R.C.C. Transitions.

Claim No.2 :- Statutory increase in the labour charges

Claim No.3 :- Refund of 1/2 rebate recovered from R.A. Bills.

Claim No.4 :- Counter Claim of the State of Maharashtra.

4. Both the parties produced documents viz. Contract agreements, correspondence in support of their claims. They did not adduce any oral evidence. After considering the pleadings of the parties, documentary evidence produced by them and the arguments advanced, arbitrators came to the conclusion that irrigation department, State of Maharashtra i.e. defendant shall pay to Plaintiffs/claimants Rs.31,64,711/- towards full and final settlement of all claims of the claimants and counterclaim of the respondent and the said payment shall be made on or before 31/01/1990 failing which the Plaintiff would be entitled to claim interest at the rate of Rs.16.5% per annum from 01/02/1990 till the realization.

5. On the basis of the said award M/s. Atur India

Private Limited filed an application to accept the award and pass a decree as per the award dated 30/11/1989. The said application was converted into a suit. The defendant-State of Maharashtra further filed an application under Section-30 of the Arbitration Act, 1940 for setting aside the award on the ground that the arbitrators misconducted themselves or the proceedings.

6. On the basis of the pleadings of the parties the learned Civil Judge Senior Division framed issues. Both the parties did not adduce any oral evidence but sought to rely upon affidavits filed by their witnesses and the documents produced on record, including the award.

7. After considering the material on record and hearing arguments of the learned Advocates appearing on behalf of the parties, the learned Civil Judge, Senior Division, Sangli came to the conclusion that defendant-State of Maharashtra has failed to prove that the arbitrators misconducted themselves while exercising their authority. The learned Trial Judge also held that the interest granted by the arbitrators was legal and correct and there was no necessity to interfere with the said award. He, therefore, passed decree as mentioned earlier.

8. Being aggrieved by the said decree State of Maharashtra has filed the present appeal. In this appeal before us, Shri V.H. Mehta, learned Advocate for the State-original defendant has urged only 3 points. Firstly, he submitted that the claim No. 1 (d) was for interest which the Respondent had paid on the amounts borrowed by them upto 15/03/1986 and was to be refunded, the said claim was beyond jurisdiction of the arbitrator and was out of the scope of reference and as such award in that behalf is bad in law. Secondly, he canvassed before us that the arbitrators had acted in disregard to the terms of contract in respect of the escalation in labour charges and thereby

caused an error apparent on the face of the award. Lastly, he submitted that the arbitrators have arbitrarily granted interest at the rate of 16.5%. By granting such interest the effect would be that the defendant would be required to pay interest even on the amount which is already granted by way of compensation. According to him, the interest at the rate of 16.5% is excessive. He therefore, submitted that the appeal be allowed and decree be modified accordingly. As against this, learned Advocate for the Plaintiff-Respondent supported the decree passed by the learned Trial Judge and submitted that the defendant-State of Maharashtra has totally failed to prove that the arbitrators had misconducted themselves or the arbitration proceedings.

9. At the outset it must be mentioned that in the instant case all the 3 arbitrators were appointed by the Appellant-defendant i.e. State of Maharashtra. So, normally, it can not be said that they had any bias against the defendant-State of Maharashtra. The Appellant-defendant has challenged the award only on the ground that arbitrators misconducted themselves while dealing with arbitration. In fact, the defendant-State of Maharashtra has filed an application under Section-30 of the Arbitration Act, 1940. The defendant

is also relying on the provisions of the Section-15 and 16 of the Arbitration Act, 1940. So, it would be worthwhile to see as to what are the said provisions. The same are as under :-

> ***"15. Power of court to modify award – The court may by order modify or correct an award -***
> ***(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or***
> ***(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or***
> ***(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission."***
>
> ***"16. Power to remit award – (1) The Court may from time to time remit award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit-***
> ***(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter can not be separated without affecting the determination of the matters referred; or***
> ***(b) where the award is so indefinite as to be incapable of execution; or***
> ***(c) where an objection to the legality of the award is apparent upon the face of it.***
> ***(2) Where an award is remitted under sub-section (1) the court shall fix the time within which the arbitrator or umpire shall submit his decision to the court ;***
> ***Provided that any time so fixed may be extended by subsequent order of the***

court.
(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed."

"30 Grounds for setting aside award – An award shall not be set aside except on one or more of the following grounds, namely :-

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(c) that an award has been improperly procured or is otherwise invalid."

10. It is not in dispute that the defendant-State of Maharashtra is mainly relying on Section-30 of the Arbitration Act, 1940. So, before finding out whether the provisions of Section-30 can be made applicable to the present matter it must be noted that in **Smt.Santa Sila Devi V/s. Dhirendra Nath Sen AIR 1963 Supreme Court 1677** the Apex Court has observed that the basic approach of the Courts towards arbitral award should be to support it rather than to destroy it. In Arbitration, the parties constitute the arbitrator as the final authority to decide their dispute. They bind

themselves to accept the award as final and conclusive. Even having regard to the object of the Arbitration Act and its scheme, award is ordinarily not liable to be set aside on the ground that either on facts or in law it is erroneous. When the case is filed under section-30 of the Arbitration Act, 1940 the misconduct i.e. contemplated under the said section can be legal as well as factual. It may relate personally to the arbitrator or to the conduct of arbitral proceedings. From the pleadings of the defendants, one thing is certain that they are not alleging any misconduct relating personally to the arbitrator. The learned AGP in fact emphasized on the point that the arbitrators considered some aspects which were beyond the scope of reference and beyond their jurisdiction and that way the arbitrators misconducted themselves to the conduct of arbitral proceedings.

11. It is worth to note that the defendant has in fact admitted that reference to arbitration was as per the requirements of Clause-54 and 55 of the tender and disputes referred to the arbitration were clearly arbitriable. The first claim was in connection with deletion of R.C.C. transition. It is the case of the defendant that the assessment made by the arbitrators

with regard to the said claim is not correct. We find that the Plaintiffs claimants had claimed extra costs due to increase in depth of foundation at the rate of Rs.30,000/- per meter and not at Rs.15,000/-. They have also stated that the said costs are for each transition. In support of their claim of Rs.30,000/- they have also produced some material which is considered by the expert arbitrators. As the arbitrators were the expert experienced engineers they were in fact in a better position to know the details about the said work and it's costing aspect. The claimants had come out with a case that deleted work needs to be worked out at D.S.R. as done for extra items, which method was accepted in principle by the Government. When the amount of Rs.12.77 lakhs was paid to Plaintiffs, defendant had in fact conceded that the actual costs of transitions worked out to 4 % and not 10 % as given in billing schedule. While considering the value of the deleted work the arbitrators have taken into consideration the proper method which is applied for estimating the value of the same. They have also specifically mentioned as to why it would not be correct to estimate the costs of deleted work on the basis of estimate given in tender. Thus, we find that arbitrators after proper application of mind have

determined the claim in respect of the deletion of R.C.C. transitions.

12. The learned AGP argued before us that the arbitrators have wrongly accepted the Plaintiff's claim in respect of the statutory increase in the labour charges. It is the case of Plaintiff that the work was given to them in 1981 and by statue of the Government the minimum wages of labour were suddenly increased in October-1984 and continued to rise more steeply than earlier due to dearness allowances. Comparative figure were as under:-

	1981	**1984**
Skilled	**Rs.9.00**	**Rs.18.42**
Semiskilled	**Rs.7.00**	**Rs.16.42**
Unskilled	**Rs.4.00**	**Rs.13.42**

13. So, according to Plaintiffs, they were required to pay labour charges at much higher rates than the rates which they had assumed. According to them, the increase in the said charges was not normal and it was not at all foreseen by any contractor and as such can not be accepted to be covered by escalation clause provided in the contract. It was argued on behalf of the defendant that Plaintiffs have not adduced any proof to show that they have actually paid the labour

charges at higher rate in respect of the contract in question. It is true that it would have been better if Plaintiffs would have produced the said direct evidence showing payment of labour charges to the labourers engaged in respect of the contract in question. However, in stead of that Plaintiffs have produced documents showing the wages that were being paid to labour at other work site at the time of tendering of this work from year to year. They have also produced evidence to show the wages that were paid just prior to the date of statutory increase in minimum wages for the Bhima Aqueduct site which work was of similar nature and located in the same zone. From the perusal of the award it appears that the arbitrators have taken into consideration the fact that there was no proof of actual payment of wages to the labourers engaged for the contract in question. The Arbitrators have also taken into consideration that it is a general practice of the contractor to allot work on piece rate system and when such is the position there is no possibility of having direct proof with regard to payment to each worker. When the work in question has been carried out during the period after the increase in the rate of minimum wages, then, normally, it must be presumed that the contractor was required to pay labour charges as

per the provisions of the Minimum Wages Act. From the perusal of the award and in particular the reasoning given by the arbitrators on page-18 and 19 of the award, it must be held that arbitrators have rightly accepted the Plaintiff's claim with regard to statutory increase in the minimum wages. It can not be said that the finding of the arbitrators in that behalf is not legal and correct or that it is not borne out from the material and facts on record. So far as refund of 1/2 percentage recovered from the R.A. Bills is concerned the said point is not in fact emphasized during the course of argument. Moreover it appears that arbitrators have properly considered the same.

14. It is needless to say that when arbitrators were experienced engineers, their interpretation with regard to the application of particular method in calculating the assessment of loss or value can not be questioned and it is not proper for the Court to adopt its own interpretation in that behalf. For this proposition, useful reference can be made to a case reported in **AIR 1990 Supreme Court 1340**.

15. Shri Mehta, learned AGP strenuously argued before us that there was no stipulation regarding

payment of interest on outstanding amount nor Plaintiff had issued any notice claiming interest and as such Plaintiffs were in fact not entitled to get interest and interest awarded by the arbitrator is exorbitant. However, it is well settled that arbitrator has power to grant interest for all three stages i.e. pre-reference, pendent lite and post award, provided rate of interest is reasonable and agreement does not provide for grant of interest nor prohibited such grant. It has been so held by the Apex Court in **Bhagwati Oxygen Limited V/s. Hindustan Copper (2005)6 SCC 462**. It must be noted that in the above cited case the interest was in fact granted by the arbitrator and lower court at the rate of 18% for all three stages and it was upheld by the Apex Court. What is more to be noted is that in the said case the Apex Court has observed that the provisions of Section-34 of Civil Procedure Code and the provisions of Interest Act are not in fact applicable and the arbitrator has got every power to grant interest considering the facts and circumstances of the case. Similar view has been taken in a case **State of Rajasthan V/s. Navbharat Construction Company (2005) 11 SCC 197**. So, having regard to the facts and circumstances of the case and the period for which the amount of Plaintiff's bill

remained unpaid, it can not to be said that the rate of interest granted by the arbitrator and consequently by the Court is unreasonable.

16. In view of the above discussion, we are of the considered view that the defendant-State of Maharashtra have failed to prove that the arbitrators in the instant case acted arbitrarily, irrationally, capriciously, or independently of the contract. We are of the view that the conclusions drawn by the arbitrator are supported by valid reasons. In fact, it is well settled that the Court while exercising power under section-30 of the Arbitration Act, 1940 can not re-appreciate the evidence or examine correctness of the conclusion arrived at by arbitrator. The jurisdiction is not appellate in nature and award passed by the arbitrator can not be set aside on the ground that it was erroneous. It is not open to the Court to interfere with the award merely because in the opinion of the Court another view is equally possible. It has been so held in **Bhagwati Oxygen V/s. Hindustan Copper (2005) 6 SCC 462**. Thus, Appellant-original defendant has failed to prove that arbitrators in the instant case misconducted themselves or proceedings or that there is any apparent mistake on the face of the

record of the arbitration proceedings or that award has been improperly procured or that the arbitrators have exceeded their jurisdiction. So, we have no hesitation to hold that the judgement and order passed by the Civil Judge, Senior Division, Sangli in the above mentioned suit is legal and correct.

17. In this view of the matter, there is no substance in this appeal. Hence, we pass the following order :-

O R D E R

The appeal is dismissed.

Under the circumstances of the case parties to bear their own costs.

(S.R.SATHE,J.) **(S.B. MHASE,J.)**